

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-9 and 13-19 are pending. Claims 1, 4-6, 10-12 and 14-17 are amended, and claims 18 and 19 added, without prejudice.

No new matter is added.

It is submitted that these claims are patentably distinct from the prior art, and that these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments to the claims, and the remarks made herein, are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Support for the amended recitation in the claims and the new claims is found throughout the specification and from the pending claims.

II. 35 U.S.C. §112, SECOND PARAGRAPH, REJECTIONS

Claims 4-17 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. The rejection is traversed.

The amendments to the claims, without prejudice, have rendered the instant rejection moot.

Consequently, reconsideration and withdrawal of the Section 112, second paragraph, rejections are respectfully requested.

III. 35 U.S.C. §103 REJECTION

Claims 1-17 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent 4,014,521 to Berman in view of U.S. Patent No. 3,983,553 to Kesling and further in view of matters allegedly considered old and well known. The rejection is traversed.

It is respectfully asserted that it is well-settled that there must be some prior art teaching which would have provided the necessary incentive or motivation for modifying the reference teachings. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993). Further, “obvious to try” is not the standard under 35 U.S.C. §103. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). And, as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): “The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification.” Also, the Examiner is respectfully reminded that for the Section 103 rejection to be proper, **both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure.** *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

Applying the law to the instant facts, Berman fails to teach or suggest the instantly claimed invention. Berman relates to divider nets for use between tennis courts. Nowhere, however, is there any disclosure, teaching or suggestion that would motivate a skilled artisan to practice the instantly claimed sports enclosure defining an interior chamber, said chamber being divided into a multiplicity of play arenas, said arena having, *inter alia*, a means for moving a basketball goal operating at a first voltage, relays for controlling said means, said relays being responsive to relay control signals at a second voltage, said second voltage being lower than said

first voltage; and central control means for separately operating each means for moving, and generating said relay control signals.

Neither is there any teaching, suggestion or motivation in Berman that would lead a skilled artisan to practice instant claim 18. More specifically, Berman fails to teach or suggest a sports enclosure apparatus defining an interior chamber, said chamber being divided into a multiplicity of play arenas, each arena comprising a defined playing zone; a basketball goal on one side of each play zone, said basketball goal being movable to a non-playing overhead position and to a playing lower position; means for moving the basketball goal from the non-playing overhead position to the playing lower position and for moving the basketball goal from the playing lower position to the non-playing overhead position; relays for controlling said means for moving by a control line, said relays being responsive to relay control signals; and a central control means for separately operating each means for moving, and generating said relay control signals for separately activating a plurality of control lines.

It is error for the Examiner to make the blanket allegation, by citing to *In re Venner* on page 2 of the Office Action, that “automating a manual activity has been held to be obvious and not considered a patentable advance.” Firstly, the Federal Circuit was very clear that “reliance on per se rules of obviousness is legally incorrect and must cease.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995).

Secondly, *In re Venner* is distinguishable from the instant case. See *Ex parte Brouillet*, 2001 WL 1339914 (B.P.A.I. April 12, 2001). In *Venner*, all the limitations of the claims were disclosed in the applied references. That is not so here, as there is no suggestion in any of the cited documents for, *inter alia*, a means for moving a basketball goal operating at a first voltage, relays for controlling said means, said relays being responsive to relay control signals at a second

voltage, said second voltage being lower than said first voltage; and central control means for separately operating each means for moving, and generating said relay control signals.

Further, the Examiner has not established that manually adjusting the basketball goals accomplishes the same result as automatic adjustment utilizing a central control means. Manual adjustment, for example, does not prevent unauthorized adjustments. By contrast, the instantly claimed invention utilizes a keypad which is adapted to receive a security code in order to maintain security. Thus, according to the Board in the analogous *Brouillet* case, the Examiner “has not carried the burden of establishing a *prima facie* case of obviousness.” *Brouillet*, 2001 WL 1339914 at *3.

Kesling does not remedy the inherent deficiencies in Berman. Kesling simply relates to a control panel assembly for electrical appliances and to a remote touch-pad control panel for a domestic appliance (such as a dishwasher) coordinated with a sound system. Contrary to the allegations in the Office Action, however, nowhere in Kesling is there any teaching or suggestion that would motivate a skilled artisan to practice the instantly claimed invention. Neither is there any suggestion or motivational recitation in Kesling that would lead a skilled artisan to combine its teachings with that of Berman, or vice versa.

Further, it is error for the Examiner to merely assert that a claimed element, not found in the cited art, is “well known in the art” if no reasons or authorities are relied upon for support. With regard to the use of such a basis for rejecting the claimed invention, reference is made to *In re Pardo and Landau*, 214 U.S.P.Q. 673 (C.C.P.A. 1982) in which the court states:

‘Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the [applicant] given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference.’

Id. at 677, citing to *In re Ahlert*, 165 U.S.P.Q. 418, 420-21 (C.C.P.A. 1970)

In view of *In re Pardo and Landau* and *In re Ahlert*, it is improper for the Examiner to fail to cite a reference which specifically describes the instantly claimed sports enclosure having, *inter alia*, a defined playing zone, a basketball goal, means for moving the basketball goal, relays for controlling the means for moving the basketball goal, and central control means. Thus, the rejection must fail as a matter of law.

Even assuming, *arguendo*, that a showing of *prima facie* obviousness could be made, which Applicants in no way concede, the instant invention exhibits unexpected results and superiority over the art and, thus, rebuts any holding of *prima facie* obviousness. More specifically, the instant invention is adapted to be operated with reduced cost, reduced complexity, increased safety, reduced insulation requirements, and with a consolidation of electrical lines. Indeed, one of the superior benefits of the instant invention is the cost savings that result from running low voltage control lines down to the control device, such as a key pad. Such results are not present in the documents cited by the Examiner.

Consequently, reconsideration and withdrawal of the Section 103(a) rejections are believed to be in order and such actions are respectfully requested.

As this paper is being submitted within the three-month term for reply set by the September 25, 2002 Office Action, no fee is believed to be due. In the event, however, a fee is required for the consideration of this paper, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, to Deposit Account 50-0320.

CONCLUSION

In view of the remarks and amendments herewith and those of record, the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,

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VERSION TO SHOW CHANGES MADE

Please amend claims 1, 4-6, 10-12 and 14-17, without prejudice, as follows:

1. (Amended) A sports enclosure apparatus defining an interior chamber, said chamber being divided into a multiplicity of play arenas, each arena [having;] comprising:
 - a defined playing zone;
 - a basketball goal on one side of each play zone, said basketball goal being movable to a non-playing overhead position and to a playing lower position;
 - means for moving the basketball goal from the non-playing overhead position to the playing lower position and for moving the basketball goal from the playing lower position to the non-playing overhead position, said means for moving operating at a first voltage;
 - relays [which control] for controlling said means for moving at said first voltage, said relays being responsive to relay control signals at a second voltage, said second voltage being lower than said first voltage; and
 - a central control means for separately operating each means for moving, and generating said relay control signals.
4. (Amended) The apparatus of claim 3, wherein said numeric or alphanumeric keypad further [includes] comprises keys for choosing from said means for moving the basketball goal and said means for moving curtains.
5. (Amended) The apparatus of claim 4, wherein said central control means [includes] comprises means for activating a plurality of control lines.

6. (Amended) The apparatus of claim 5, further [including] comprising switch means responsive to said control lines for activating a number of power lines.

10. (Amended) The apparatus of claim 1, wherein said [second voltage being lower than said first voltage allows for] apparatus is adapted to be installed with reduced cost, reduced complexity and increased safety.

11. (Amended) The apparatus of claim 1, wherein said [second voltage being lower than said first voltage allows for] apparatus is adapted to be installed with reduced installation costs and insulation requirements.

12. (Amended) The apparatus of claim 1, wherein said [second voltage being lower than said first voltage allows for] apparatus is adapted to be installed with a consolidation of electrical lines[, resulting in reduced cost and complexity].

14. (Amended) The apparatus of claim 13, wherein said touch screen is [customizable to a particular application] adapted to be customized.

15. (Amended) The apparatus of claim 13, wherein said touch screen [further includes] is adapted to depict virtual animation.

16. (Amended) The apparatus of claim 1, further [including] comprising means for moving a number of height adjusters.

17. (Amended) The apparatus of claim 1, further [including] comprising means for controlling an auxiliary gymnasium equipment.

Please add new claims 18, without prejudice, as follows:

-- 18. (New) A sports enclosure apparatus defining an interior chamber, said chamber being divided into a multiplicity of play arenas, each arena comprising:

a defined playing zone;

a basketball goal on one side of each play zone, said basketball goal being movable to a non-playing overhead position and to a playing lower position; means for moving the basketball goal from the non-playing overhead position to the playing lower position and for moving the basketball goal from the playing lower position to the non-playing overhead position;

relays for controlling said means for moving by a control line, said relays being responsive to relay control signals; and

a central control means for separately operating each means for moving, and generating said relay control signals for separately activating a plurality of control lines.